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BEFORE THE

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

CORRECTED ORDER NO. 296

Served August 26, 1963

IN THE MATTER OF:

Application of Henry G. Bartsch d/b/a Airport Dispatching Service, for a Certificate of Public Convenience and Necessity	))))	Application No. 232 Docket No. 45

On January 7, 1963, Henry G. Bartsch, d/b/a Airport Dispatching Service, filed an application for "Certificate of Authority to continue to engage in Taxicab and Livery (Limousine) transportation between points and places in the D. C. (including taxicab and airport limousine stands on public property adjoining the Statler and Mayflower Hotels) and the Washington National and Dulles International Airports, said transportation being over no defined route and on no regular schedule." The application went on to state that the transportation involved was "bona fide engaged in by the applicant since prior to March 22, 1961...." The applicant further stated that he was filing "under protest without intent to waive the right to challenge the jurisdiction of the Commission in the premises under the exemption of Taxicabs and like vehicles of less than nine passenger capacity operated other than on regular routes and regular schedules. Compact: XII. 2d and 1c, qui vide." The application also had attached thereto as exhibits certain portions of local area telphone directories and a copy of a transcript of a Congressional hearing.

On February 11, 1963, the Commission wrote to the applicant requesting an explanation as to the nature and extent of the "protest". An answer was duly made by letter dated February 21, 1963, in which the applicant declared his views and position to be as follows:

> "(1). That less-than-9-passenger-capacity vehicles-for-hire when bound from the Airport to passenger-requested D. C. home, office and hotel destinations, are bona-fide engaged in a type of Taxicab Operation, irrespective of whether the vehicles themselves be called cabs, taxicabs, livery vehicles or limousines. (2). That less-than-9-passenger-capacity vehicles-for-hire when bearing passenger(s) picked up from D. C. Homes, offices, hotels or motels for transportation to passenger-directed alighting points on the Airport, are bona-fide engaged in a type

> of Taxicab Operation, irrespective of whether the vehicles themselves be called cabs, taxicabs, livery vehicles or limousines."

This exchange of correspondence was subsequently followed by an informal conference between the executive director of the Commission and the applicant, at which the Commission agreed to hold the application in abeyance for an undetermined, reasonable length of time. Subsequently, on July 22, 1963, the Commission issued Order No. 285 setting this matter for hearing, and in addition, requiring the applicant to publish a notice of the application and hearing in a newspaper of general circulation in the Metropolitan District, at least once fifteen days prior to the hearing. Copies of that order were served upon all known authorized carriers in the Metropolitan District. Protests to the application were filed by Airport Transport, Inc., and D. C. Transit System, Inc.

It is necessary at this juncture to recite a brief history of the Washington Metropolitan Area Transit Commission Regulation Compact (hereinafter referred to as "Compact"). The Compact is an interstate agreement between the States of Maryland and Virginia and the District of Columbia. It was approved December 22, 1960, and became effective on March 22, 1961. Section 4(a), Article XII of the Compact, provides as follows:

> "...that if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within 90 days after the effective date of this Act. Pending the determination of any such application, the continuance of such operation shall be lawful."

Section 1(c) of the Compact provided as follows:

> "Notwithstanding the provisions of paragraph (a) of this section, this Act shall apply to taxicabs and other vehicles having a seating capacity of eight passengers or less in addition to the driver thereof with respect only to (i) the rate or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage."

The Commission has heretofore, in Order No. 172, construed the words "and other vehicles" to mean other vehicles used in performing a bona fide taxicab service. This construction was and is under attack

in another proceeding. In order to clarify the situation the Commission sponsored legislation before the appropriate Legislatures seeking a change in the original language of Section 1(c) to reflect what the Commission felt was the original intent of the Legislatures. The Legislatures of the State of Maryland and the Commonwealth of Virginia enacted the legislation unanimously. The Congress of the United States, acting in a dual capacity, unanimously approved the legislation on behalf of the District of Columbia and subsequently gave its Constitutionally-required consent. The Executives of the three states affixed their signatures to the Amendments on March 29, 1963. In view of the fact that the Commission sponsored the legislation as a clarification of existing law and not a substantive change in the law, additional "grandfather" language, similar to that in Section 4(a), was not made a part of the amendment. This was so explained to the legislative committees to whom the bills were referred.

At the commencement of the hearing, the applicant stated that he was appearing "specially" in order to test the jurisdiction of this Commission in several respects, contending that (1) the transportation he performed fell within the meaning of "taxicab" as defined by Section 2(d) of the Compact. However, he argued that if, in the alternative, his operations were not that of taxicab and required the certificated approval of the Commission, that then he was entitled to "grandfather" authority. It was his further argument, based on this premise, that the authority must reflect what was stated in his application and that the question of whether the transportation stated in his application was bona fide could not be subject to inquiry by anyone but the Commission, even though others might be affected by the issuance of a Certificate to him.

The applicant's contention that "grandfather" rights may have accrued to him as a result of the amendment of Section 1(c) is without merit. This Amendment, as noted above, merely clarified the existing law and resulted in no substantive change therein. To be entitled to "grandfather" rights under the Compact, an appropriate application must have been filed with the Commission on or before June 22, 1961. This the applicant did not do.

While many legal questions are posed by the applicant, both by his statements and his actions, the determinate issue is whether or not, on the face of the application, since this is the only "fact" that we have before us, the transportation rendered by the applicant is taxicab service as defined in Section 2(d), Article XII of the Compact. If so, then this application should be dismissed and the other issues become moot insofar as this proceeding is concerned. The Commission's jurisdiction over taxicabs extends only to when they are operated from one signatory to another and then only to rates and minimum insurance requirements.

The applicant in the hearing took the position that the Commission did not have the right to require him to publish notice of his application and to permit those possibly affected by the issuance of the authority sought to contest his claim of bona fide operation. He

refused to testify and to subject himself to cross examination, stating that he would rely on the information set forth in his application. Neither of the protestants offered evidence.

The letters of February 11 and 21, 1963, heretofore identified, will be considered as part of the application. Also included as part of the application is a four page document filed several days before the hearing.

After considering the scanty, little-detailed statements of the application, the Commission is of the opinion and finds that the applicant is engaged in performing a bona fide taxicab operation in that the transportation is in motor vehicles for hire designed to carry eight passengers or less, not including the driver, used for the purpose of accepting or soliciting passengers for hire in transporation subject to the Compact along the public streets and highways as a passenger may direct, and not operated between fixed termini on regular schedules. The Commission is of the further opinion that since no authority is required for this type of operation, this application should be dismissed.

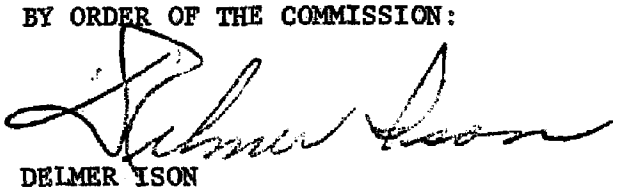
One matter remains for consideration. The applicant has taken the position that the Washington National Airport is not within the jurisdiction of the Commission because of the fact that while it lies within the geographical boundary of the Commonwealth of Virginia, Virginia ceded jurisdiction over the Airport proper to the Federal Government. The basis for this argument is found in Section 8, Article XII of the Compact wherein it is provided that the Commission "shall have the duty and the power to prescribe reasonable rates for transportation by taxicab only between a point in the jurisdiction of one signatory party and a point in the jurisdiction of another signatory party provided both points are within the Metropolitan District." The Washington National Airport is located at what is known as Gravelly Point, Virginia, and is clearly within the geographical boundary of that State. While there is not explicit legislative history on this point, the Commission is unable to find any instance whereby it was contended that any point within the Metropolitan District was to be set aside and an island of no jurisdiction created. The Commission takes judicial notice that there are literally hundreds of places within the Metropolitan District that could fall within the claimed exemption. This would emasculate Section 1(c) and render the Commission's jurisdiction over interstate taxicab fares completely ineffectual. Many constructions have been placed upon the word "jurisdiction" and it is obvious to the Commission that the Legislatures intended it in this instance to be synonymous with the geographical boundary of the signatory parties. This can be the only sound, logical interpretation when read in pari materia with Section 1(c), "...for transportation from one signatory to another within the confines of the Metropolitan District."

THEREFORE, IT IS ORDERED:

1. That Order No. 296, served August 20, 1963 be, and it is hereby, set aside, cancelled, and held for nought because of printing errors contained therein.

2. That the application of Henry G. Bartsch, d/b/a Airport Dispatching Service, be, and it is hereby, dismissed.

BY ORDER OF THE COMMISSION:



DELMER ISON
Executive Director